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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GRAHAM FIELD, INC.

Plaintiff

vs.

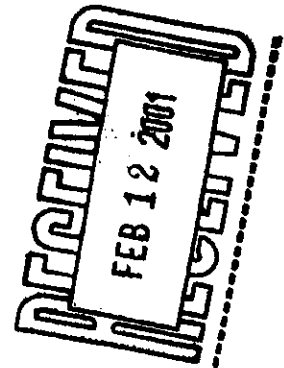
TUFFCARE, INCORPORATED

Plaintiffs

CIVIL NO. 98-1306

DEPOSITION TAKEN OF;

Mc CALVIN CHANG



On the fourteenth (14th) day of April two thousand at ten
o'clock in the morning (10:00 AM) at the Law firm WOODS & WOODS
located at 105 Ponce de León Avenue, 6th floor, (Hato Rey) San
Juan, Puerto Rico 00917.

Nortesa Reporters

P.O. Box 8493, Bayamón, Puerto Rico 00960 / Tels. 785-0620 / 780-5614

1 APPEARANCES

2
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15
16 NOTARY

17 Atty Arturo Negrón García

18
19 DEPONENT

20 M. Calvin Chang

21
22 REPORTER

23 Carmen S. Sánchez de Candelas
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1 ATTY KENNETH MCCULLOCH

2 My name is Kenneth McCulloch. I represent Graham Field,
3 Inc. and Graham Field Express, Puerto Rico, Inc. We are here
4 for the deposition of Calvin Chang pursuant to know that there
5 is an order in the case called Graham Field, Inc., and Graham
6 Field Express of Puerto Rico, Inc. against Tuffcare,
7 Incorporated. Mr. Chang, I am going to be asking you some
8 questions during this deposition and (Interruption). I guess
9 before we go on counselor... stipulate.

10 ATTY ARTURO NEGRON

11 Mrs. Sánchez raise your right hand, please. Do you
12 swear to record and transcribe precisely all the incidents in
13 this deposition?

14 COURT REPORTER

15 Yes.

16 ATTY ARTURO NEGRON

17 Mr. Calvin Chang, please raise your hand. Will you
18 testify the truth and only but the truth during this
19 deposition?

20 CALVIN CHANG

21 Yes.

22 ATTY KENNETH MCCULLOCH

23 We have the standards stipulations that we've
24 discussed already. Mr. Chang I am going to be asking you
25

1 questions. If you don't understand the question, tell me you
2 don't understand, and I'll try to rephrase the question.

3 CALVIN CHANG

4 Okay.

5 ATTY KENNETH MCCULLOCH

6 If for any reason you want to take a break, we can
7 take a break. And if you want to consult with your attorney
8 during the course of the deposition, consult with your
9 attorney.

10 CALVIN CHANG

11 Okay.

12 MR. CALVIN CHANG

13 after being duly sworn states as follows

14 DIRECT EXAMINATION

15 ATTY KENNETH MCCULLOCH

16 Q Would you please state your full name, please?

17 A Calvin Chang.

18 Q Do you have any other names besides Chang as your
19 last name?

20 A No.

21 Q What was your mother's name?

22 A Lucille Chang.

23 Q And your father's name?

24 A Dean Chang.

25 Q Tin?

1 The approximate, it is probably; probably twenty
2 million dollars.

3 ATTY KENNETH MCCULLOCH

4 Okay. Twenty million. Approximately in 1999, the
5 last year. And of those products sold about how many were
6 products manufactured? Approximately how much of those sales
7 were products manufactured by Tuffcare, as supposed to other
8 products that you brought in from Shini or other company?

9 A Oh, I am not sure of the ratio. Again, this needs to
10 be; I need to look at the paper work.

11 Q Okay.

12 ATTY ARTURO NEGRON

13 What I will suggest, Counselor, it would be easier if
14 you could; those particular questions, you know, need to be
15 reviewed by client in order to provide you the correct
16 information that you might need. If you could submit a
17 supplemental we would abide by an interrogatory. It would be
18 easier for him to answer.

19 ATTY KENNETH MCCULLOCH

20 At this point, I am just trying to weight around in
21 this marketing area and get a sense of what we are dealing
22 with. Tuffcare, taking 1999 as an example, during that year it
23 sold products that purchased or had on consignment from Shini,
24 also? Is that correct?

25 A Can you repeat the question.

1 A Yes, this is not the. Some of the prices are the
2 same; but, some of the prices are different.

3 Q Okay. Let me ask. What do you use the Dealer's
4 Price List for?

5 A This is the regular price for the people that
6 purchase at lower quantities.

7 Q When you say lower quantities you mean the second
8 line of distribution?

9 A What do you mean with second line of distribution?

10 Q Who do you give the Dealer's Price List to?

11 A To all of my customers.

12 Q Okay. When you say all of your customers, who are
13 your customers in Puerto Rico?

14 A It would be Graham Field, and Medex, and whichever
15 companies that wants it. We would give it to them.

16 Q Okay, but other than Graham Fields and Medex, do you
17 give the price list to anyone else? Would you give the price
18 list to anyone else in Puerto Rico?

19 A Yes, if they request it, we would give it to them.
20 The price list is not a big confidential document for us. You
21 know, it is the price of the products, so.

22 Q Is that the suggested price that Tuffcare is
23 suggesting that Graham Field or Medex sell its products for to
24 people that are buying in smaller quantities?
25

1 A We don't suggest any price for anybody. This is the
2 price we sell to our customers that buys in low quantities.

3 Q Okay, so that Dealer's Price List that you refer to
4 as Exhibit 2 and 3, what you are saying now is that if somebody
5 is buying from Tuffcare, 1 to 5 units, or 6, the price list.
6 The price list has prices for 1 to 5 units, and for 6 or more
7 units, correct? On these items?

8 ATTY ARTURO NEGRON

9 Well, I would suggest to be more precise because I am
10 looking through it now. There might be different numbers.
11 Some I'll say, as you are asking, some. If you use an example
12 it might be easier for him to answer. Because there are
13 different quantities for.

14 CALVIN CHANG

15 Different products.

16 ATTY ARTURO NEGRON

17 Some mention 1 to 5, 6 plus; 1 to 11 units; so, it is
18 easier if you. Use whatever you want, but.

19 ATTY KENNETH MCCULLOCH

20 I'll take as an example; why don't you look at page
21 3 of Exhibit 2, and I will look at page 3 of Exhibit 2.

22
23 ATTY ARTURO NEGRON

24 Which product will be. Are you taking a model?

25 ATTY KENNETH MCCULLOCH

1 A First, we make sure that they aren't the general
2 public. We make sure that they have a resale number; that they
3 are into medical and product resale. Then, we go through the
4 credit application, we set them up, then we allow to sell them
5 products. But, first we verify that they are resalers; that
6 they are not purchasing for their own use.

7 Q So, this is the price; Dealer's Price List is the
8 price that you say you would use to; that you would charge to
9 small dealers who are buying small quantities for resale. Is
10 that correct?

11 A For resale or for rentals, yes.

12 Q But, if they buy it. Some people might be buying it
13 to rent out the product. Is that what you are saying?

14 A Yes, ajá.

15 Q Okay. Now, let's go to Puerto Rico. How would these
16 documents be used in Puerto Rico? The Exhibits Number 2 and
17 Number 3, the Dealer's Price List? Who would?

18 A Well, we give these price lists to other customers
19 that request the price here and for smaller quantities they
20 will pay this price. But, for larger quantities then we will
21 give them a special price.

22 Q When you say the customers, does Tuffcare have any
23 direct customers in Puerto Rico, as of this time, except Medex?

24 A Graham Field and some other companies. But, I don't
25 remember every single company.

1 Q I am talking about, who does Tuffcare ship in goods
2 to directly into Puerto Rico; as of this time.

3 A When you say, as of this time, it is for the last one
4 year, the last one month, or the last one week, or yesterday?
5 I mean, the time frame. Because, right now, we still conceive
6 that Graham Field is our customer. I mean, even though they
7 haven't been ordering, but we assume they still have inventory.
8 That is why they haven't order. So, I mean, can you put a time
9 frame, so. Or, do you consider that if they don't buy they are
10 not our customer? To us, they are always our customer unless
11 they say that they are not our customer.

12 Q In the year 2000, who has Tuffcare shipped directly
13 to in Puerto Rico?

14 A To the best of my understanding it is Medex and it
15 might be some other companies, but I need to confirm on that.
16 I don't look at every single invoice myself.

17 Q So, Tuffcare, from what you are saying is selling
18 directly in Puerto Rico without selling through Medex?

19 A Well, Tuffcare will sell to whoever wants to buy;
20 whoever wants to buy and can pay, Tuffcare will sell. But, we
21 have a different price in structure for different kinds of
22 quantities.

23 Q Okay. Let me give an example. If someone in this
24 year 2000, a hospital, calls up and wanted five transporters;
25 that is something between 1 to 11, would you tell them to go to

1 see Medex, or would you say we will ship you the five
2 transporters?

3 A We don't deal with the hospitals direct.

4 Q Okay. So, what would you do if somebody called and
5 was a hospital and they wanted five transporters?

6 A Well, we just tell them that we don't sell to
7 hospitals. Hospitals are considered direct customers. They
8 would be the areas that our customers will sell to. So, we
9 don't sell to hospitals.

10 Q And what you would tell to the hospital?

11 A We don't sell to hospitals.

12 Q Period.

13 A Yes.

14 Q And, "call somebody else". You wouldn't tell them
15 who they should call to get your products?

16 A My instructions to my sales people is to just tell
17 them we don't sell to hospitals, period.

18 Q In Puerto Rico; even in ..., Puerto Rico.

19 A Even in the whole world. We just tell them, "we
20 don't sell to hospitals". This is our policy.

21 Q And you don't sell to hospitals why?

22 A Because they require service. We don't do service.
23 We sell the product. But, the hospital needs. After they
24 purchase the product, they need somebody to maintain the
25

1 A Yes.

2 Q Okay. Now, in Puerto Rico, in the year 2000, what
3 dealers has Tuffcare shipped; sold, and shipped products, to?

4 A Well again, I need to check with my Sales Department
5 to look at all the people we ship to.

6 Q Well, are you shipping to anybody directly in Puerto
7 Rico, except for Medex?

8 A Yes.

9 Q Is that because orders were taking by Medex, or
10 because you now have other distributors besides Medex.

11 A Because our policies are as long as they are
12 exclusive in a certain territory, whoever wants to purchase
13 from us, and pays the bill, we will sell to them. That is our
14 policy.

15 Q And then, what price would you sell the products to
16 those people?

17 A Depends on the quantity. If it is a low quantity, we
18 use the Dealer's Price, and if it is a large quantity then we
19 will give them a lower price.

20 Q Do you have another price list other than these price
21 lists that I have referred to as Exhibits 2 and 3?

22 A For what?

23 Q For Puerto Rico.

24 A Oh, yes. We did make a Distributors Price for Puerto
25 Rico, which I believe you do have a copy, too.

1 A No, I look at the quantity they purchase and I make
2 the discount accordingly.

3 Q Suppose you were going to tell somebody to do what
4 you are doing. What kind of discount would you give from what
5 in order to make the price that you were quoting to Vicente
6 Guzmán back in 1991?

7 A I am very confused, what is?

8 Q Me, too.

9 ATTY ARTURO NEGRON

10 I am more or less confused. I more or less what you
11 want, but it is not clear.

12 ATTY KENNETH MCCULLOCH

13 Let's take an example. Vicente Guzmán calls you in
14 1991 and he wants to buy products. You don't have a Dealer's
15 Price List.

16 A No, we have a Dealer's Price List. He has it, too.

17 Q Okay.

18 A We don't have a Distributor's Price List.

19 Q Okay. Then when this occurred in 1991, how would you
20 determine what to charge Vicente Guzmán for the products that
21 he was telling you that he wanted to order, or was considering
22 ordering?

23 A Based on the quantity he wanted to purchase.
24
25

1 Q Now, and those of the items that were in the Dealer;
2 there was a Dealer's Price List for these items and you both
3 knew that Dealer's Price List. Is that correct?

4 A Yes.

5 Q So, you were talking about what he was going to pay
6 below what the Dealer's Price List indicated. Is that correct?

7 A Yes.

8 Q Okay. And that would be based upon the quantity he
9 was ordering. Is that correct?

10 A Yes.

11 Q Was this some kind of; and then you said you would
12 give a discount.

13 A Ujum.

14 Q How much of a discount would you give to him from
15 what was on the Dealer's Price List?

16 A Depends on the quantity and it depends on our
17 inventory. So, but roughly; I mean, if they order in large
18 quantities. The discount is probably between five to fifteen
19 percent less than the Dealer's Price. And what I mean by large
20 quantities it is over; as for wheelchairs, is like over a
21 hundred, like a container load at a time.

22 Q Five percent to fifteen percent below the Dealer's
23 List Price.

24 A Yes, depending on the quantity they are purchasing.
25

1 A At the National Home Health Care Convention in
2 Atlanta.

3 Q What were the circumstance under which you met? To
4 discuss business or just to have a drink, or?

5 A No, just to check out what the other person looks
6 like.

7 Q Did you have any discussion with him at that time
8 about continuing as the representative for your Company?

9 A We talked mostly about, you know, like the products.
10 Because we were doing good business together; we were shipping
11 him products, and he was paying me on time. So, we were
12 talking about the new products we can develop, you know.

13 Q When you say develop, do you mean products that
14 Tuffcare would make and sell to him?

15 A What Tuffcare can make and sell to everybody,
16 including him.

17 Q Did you sell any other goals; you set numbers there
18 as your goal, \$15,000 a month. Between that time and 1996, did
19 you set any, orally, set any different goals or in writing set
20 any other goals, or?

21 A Well, I mean the goals is not important to Tuffcare.
22 What is important to Tuffcare, for a distributor is that they
23 only carry Tuffcare, not any competing products. So, the goal
24 is not that important to Tuffcare; so we didn't set up any
25

1 goals. Our goal was to make sure our distributor only carry
2 Tuffcare product; not any competing products.

3 Q When is the first time you met Hilda Salgado?

4 A Yes, it was probably like six, seven years ago.

5 Q Looking at Exhibit 1, Hilda Salgado signed that
6 agreement, didn't?

7 A Yes.

8 Q And she indicated on the agreement it says, "owner".

9 A Okay.

10 Q Was it your understanding that Hilda Salgado was part
11 owner of VC Medical as of that time?

12 A Well, she was always answering the phone when Vicente
13 was not there. So, I assumed she was the owner; but I later
14 learned that she wasn't the owner. Vicente is the sole owner
15 of the Company. But, when I draft the agreement, I assumed she
16 was the owner because she had a lot of authority, including
17 signing a check. So, I just assumed, she is the owner.

18 Q So, she signed the checks by which VC Medical paid
19 Tuffcare for its bills. Is that right?

20 A Yes, but some of the checks; some were signed by
21 Vicente himself. They both can sign the check.

22 Q So, the agreement that is Exhibit 1 was something you
23 discussed with Vicente then you draft it up, you sent it to
24 him, you signed it, you sent it to him, and then he signed it.
25 Is that the way it was?

1 whatever happened at that time, did other people asked to buy
2 your products here in Puerto Rico?

3 A Yes.

4 Q And do you remember who asked to buy your products?

5 A I don't remember the company?

6 Q And what did you tell them?

7 A If they were buying the products that VC Health Care
8 was already purchasing, we told them we cannot sell to them.
9 But, if they were purchasing products that VC Health Care
10 doesn't carry, we sell to them.

11 Q But, wasn't VC Medical representing you on all of
12 your product line at the time?

13 A Most of the product line, but not all of it. It was
14 primarily wheelchairs. But, they are not purchasing the beds,
15 and the other patient care products. They are not purchasing
16 from Tuffcare. They are purchasing from another manufacturer,
17 or few other manufacturers.

18 Q But, wasn't that in violation of that agreement if
19 they were purchasing products that you had, but purchasing like
20 beds?

21
22 ATTY ARTURO NEGRON

23 No, I think. Excuse me. I think we should. If we
24 are going to go through the exclusiveness. That becomes into
25 the interpretation of the agreement.

1 ATTY KENNETH MCCULLOCH

2 Well, looking at Exhibit 1, you just told me that
3 from what you've told me VC Medical would buy products from
4 people who competed against you. But, of products which
5 Tuffcare had. Is that correct?

6 CALVING CHANG

7 Okay. VC Medical purchased only wheelchairs from
8 Tuffcare at that time. And VC Medical purchased beds, and
9 other products from other manufacturers. So, as far as
10 wheelchairs there wasn't any competing line; they carried it.
11 And, we were not selling any wheelchairs to other companies,
12 except VC Medical. But, as far as the other products that VC
13 don't carry, we did sell to other companies and Vicente Guzmán
14 knows about it, too. And he is okay with that because he is
15 purchasing from another manufacturer for the other products.

16 Q So, from what you are saying is he would only buy
17 wheelchairs from you, and you would only sell your wheelchairs
18 in Puerto Rico through him. Is that correct?

19 A Yes.

20 Q But, this exclusive didn't relate to other products.
21 Only to wheelchairs?

22 A Yes.

23 Q Now, did you try to get Vicente Guzmán to buy more
24 products from you besides just wheelchairs?
25

1 Q So, you discussed it with Joseph Chang, or different
2 other people in Tuffcare what name to use in Puerto Rico?

3 A Oh, yes, ajá.

4 Q And who did you discuss it with?

5 A Joseph and Lucille Chang.

6 Q Okay. And you had determined with them to set up an
7 operation in Puerto Rico?

8 A Yes.

9 Q And when did you have that discussion with them about
10 setting up and operation in Puerto Rico?

11 A Well, after Graham Field stopped paying for the
12 invoices and then we attend to court to have them pay the past
13 invoices and they just refused to pay the invoices on time.
14 And, also, we found out that Graham Field had tried to sell E
15 & J products instead of the Tuffcare products.

16 Q I asked when. When did you and Lucille, and Joseph,
17 approximately; if you have to put it in relation to different
18 events, then put it in relation to events. But, it was, from
19 what you are saying it was sometime after Graham Field took
20 over from VC Medical.

21 A Yes, that is correct.

22 Q Okay. And Graham Field took over from VC Medical in
23 about October of 1996. Correct? Is that a.

24 A Well, you said it. I don't have no way to be your
25 answerer. You say what you mean, right?

1 New York Headquarter"; but she had no control over sending the
2 check now, so it was out of her hand. But, she did her best to
3 try to get invoices paid, but she said she didn't sign checks,
4 so she had no control over paying the invoices on time.

5 Q Now that you have seen the letter, what I've showed
6 you as Exhibit 4, does that put any perspective on of when were
7 you having the discussions with your mother and your brother
8 about Tuffcare going into business in Puerto Rico under the
9 Tuffcare name?

10 A It was probably like one or two years after the date
11 of this letter that we talked about going to Puerto Rico.

12 Q Well, that letter is August of '96, so you are
13 talking about August of '97 to August of '98?

14 A To the best of my understanding it is around that
15 time. We talked about coming and set up some operation in
16 Puerto Rico, either under Tuffcare, or under another name.

17 Q And what was the purpose of setting up an operation
18 in Puerto Rico for these discussions?

19 A The biggest purpose is that Graham Field no longer
20 wanted to be our exclusive distributor. They only carried
21 competing products. So, we felt that it was not fair for
22 Tuffcare to just sell to Graham Field. We want to make sure
23 that when the dealer asked for Tuffcare products they can get
24 it in Puerto Rico. Because Graham Field was offering the E &
25

1 J wheelchair, which was the biggest competing line for
2 Tuffcare.

3 Q When you say dealer, you are talking about the
4 person; who are you talking about? Like which dealer, or give
5 an example of a dealer who might be asking for a Tuffcare
6 wheelchair and not being able to get it from Graham Field.

7 A I am not familiar with every single dealer in Puerto
8 Rico. As a matter of fact, I don't even looked at the dealers
9 in Puerto Rico. I mean, the only people I know in Puerto Rico
10 is that, Hilda and Vicente, and then Jesús. So, I don't know
11 the name of every dealer, so.

12 Q Okay, let me ask you this right now. When you talk
13 about dealer being able to get a Tuffcare wheelchair, the
14 problem was that they couldn't get it from Graham Field; and
15 therefore, you want, and Graham Field sold to dealers. Is that
16 correct?

17 A You represent Graham Field, I don't represent Graham
18 Field. So, you probably know better than me. I assume Graham
19 Field sells to dealers. But, it is not my Company.

20 Q Well, let me ask you this then, so we could. Why did
21 you have to set up Tuffcare in Puerto Rico to sell to dealers?
22 Why didn't you just put an ad in the newspaper and ship things
23 by parcel post to whoever wanted to order from Tuff?

24 A Because the dealers in Puerto Rico were needing
25 products. They would need it the same day, or the next day.

1 Q Oh, well okay, I am sorry. Then this is Exhibit 6.
2 And I would like to ask you if you can identify this document
3 which is something we received from Tuffcare.

4 A This is a copy of Medex invoice.

5 Q And on here, could we have that marked as Exhibit 6.
6 And on this document the T2500 bed is indicated; there is a
7 price next to it of \$199.50.

8 A Yes.

9 Q What is that price?

10 A This is the price that, for; the price for the T2500.

11 Q Well, I thought you said that. Well, is this a
12 special price for Medex, or?

13 A Okay. If you look at the date of the invoice, it is
14 April 7, '98.

15 Q Yes.

16 A So, before June 8, 1998 Tuffcare had a lower price on
17 the bed; but as of June 8, 1998 the price went up. So, the
18 date of this invoice is before; the price on the distributor's
19 price; which is June 8.

20 Q Okay, so from what you are telling me then, as I
21 understand it, prior to June 8, 1998, the cost for Medex to buy
22 this bed was \$199.50, but after June 8, the cost for Medex to
23 buy this T2500 bed would be the same as the price list, this
24 price list that you had given to Graham Field?

25 A Yes.